IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10076 OF 2004

Jagannath Krushnath alias Krushnaji Pingle & Ors. .. Petitioners.

Versus

Kantilal Premji Patel .. Respondent.

Mr.R.G.Ketkar for the petitioner.

Mr.Sarang Arandhye h/f.Mr.S.D.Modak for the respondent.

CORAM : R.C. CHAVAN, J.

DATE : 13TH APRIL, 2007.

P.C.:

1. Heard the learned counsel for the petitioner and the respondent.

2. The petitioner is aggrieved by the order dated 29th October, 2004 passed by the learned 7th Adhoc Addl. District Judge, Pune by disposing of Miscellaneous Civil Appeal No.606 of 2002 whereby the learned Judge vacated injunction granted in favour of the petitioner by the learned IInd Addl.Judge, Small Causes Court, Pune.

3. As for the first apprehension about carrying out repairs which affect the structure permanently, the

photograph shown by the learned counsel would exhibit that the repairs have already been carried out and whatever damage the petitioner apprehends has already been done. Therefore, there is no question of restraining the respondent now by an injunction from carrying out any further repairs. The second apprehension of the petitioner relates to creation of third party interest. While the trial Judge had granted injunction restraining the respondent from creating third party interest, the learned Judge of the First Appellate Court vacated that injunction by his judgement dated 29th October, 2004. Now, we are in April, 2007. If any third party interest has not been created so far, it would mean that apprehension by the petitioner is unfounded. In any case, when law prohibits creation of third party interest, and when that can be a ground for tenant's ejectment, further addition of judicial dictum reiterating that the tenant should not create third party interest would be meaningless.

4. In view of this, the impugned order does not call for any interference in exercise of jurisdiction under Article 227 of the Constitution of India. The Petition is consequently dismissed. The contentions raised in the petition can be agitated before the Trial Judge before whom the suit is pending. The learned Trial Judge shall

give due consideration to the fact that the suit is pending since year 2002 and endeavour to dispose of the same as early as possible.

(R.C. CHAVAN, J.)

Dt.13th April, 2007

. Respectfully submitted to the Hon'ble Mr.Justice R.C.Chavan.

. The list of following proceedings disposed of on today by your Lordship is as under : -

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Sr. No. | Proceeding No.

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1. WP 1477 of 2006
2. WP 2305 of 2004
3. WP 10076 of 2004
4. WP 2433 of 2006
5. WP 2653 of 2006
6. WP 7879 of 2006
7. WP 3930 of 2004

Yours faithfully,

H. G. SUTAR

P.A. to

Hon’ble Judge